

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 210 of 1989

in

SPECIAL CIVIL APPLICATION No 5298 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VITHALBHAI NATHABHAI PATEL

Versus

DY.DIST.DEVELOPMENT OFFICER

Appearance:

MR PS PATEL for Appellant

MR JM BAROT for HS MUNSHAW for Respondent No. 1 & 2

MR BY MANKAD, ASST. GOVT. PLEADER for Resp.No.3

CORAM : MR.JUSTICE B.C.PATEL and

MR.JUSTICE C.K.BUCH

Date of decision: 22/12/98

ORAL JUDGEMENT (Per Patel, J.)

The appellant, original petitioner, being aggrieved by the decision of the learned Single Judge rejecting Special Civil Application No. 5298 of 1987 on 30.11.1988 has preferred this appeal.

2. The appellant was appointed as a Gram Sevak on 8.4.1963 and was transferred to village Parsoda by order dated 10.7.1973. As contended by the appellant, representations were made to cancel the said transfer on the grounds of sickness of himself, his wife and his father and education of children. However, the request was turned down. It seems that he did not join the place where he was transferred. The appellant resumed duties at Talod, after a period of about 3 years, i.e. 6.7.1976, as there was transfer order by DDO. Inquiry was instituted and ultimately the respondent No.1 ordered to stop four increments with future effect by order dated 31.1.77 vide Annexure 'A'.

3. It is apparent that the appellant remained absent without sanction; Despite having been asked frequently to remain present for duty, the appellant failed to report for duty. Inquiry was held, and the development officer made a proposal to treat the period from 10.7.1973 to 5.7.1976 during which the appellant remained absent without sanction as extra ordinary leave. It appears that the Government, vide order dated 25.1.1978 directed to treat such absence as break in service and in view of this, it seems order dated 26.6.79 at Annexure 'B' came to be passed to the effect that period of absence has been treated as break in service. Remarks to this effect were ordered to be recorded in the service book.

4. Mr. Patel, learned advocate appearing for the appellant submitted that for remaining absent, inquiry was held and four increments have been stopped by way of penalty, and, therefore, though he was absent without sanction from the appropriate authority, the authority has erred in coming to the conclusion that the period should be treated as break in service. He submitted that it was open at the time of imposing penalty to pass appropriate order, but once the order having been passed to stop four increments with future effect, it was not open for the authority to pass another order to treat the period of absence as break in service.

5. The question is, merely because the appellant was punished by the department for remaining absent, automatically it cannot be said that the period of absence will be counted as on duty or on leave. The fact remains that he was absent; that he was absent without

sanction; For that purpose of penalty was imposed. Mr. Patel could not point out from the relevant Rules that considering the period of absence in service as break in service amount to penalty. The authority has merely decided that as the appellant remained absent without sanction, how that period is to be considered? That period is considered as break in service. By that, the appellant is not penalised again.

In the circumstances, we find no merit in this appeal. The appeal is dismissed. No order as to costs.
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